Remarks/Arguments

Response to rejection of Claims 1-7, 10, 13-20, and 23 under 35 U.S.C. 102(b).

The Examiner has rejected claims the 1-7, 10, 13-20, and 23 as anticipated by Waxman et al. The applicant submits that the claims as newly amended distinguish over Waxman in that the new claims further define the invention as presented in figure 4 as further described in the specification. The new claims set forth the combination of three image sensors together with a registration algorithm and color fusion algorithm. The Examiner asserts that the features of the applicant's invention are taught by the prior art but the applicant is not able to find registration algorithm as elements 360 and 362 in the prior art. In fact, these elements refer not to algorithms or programs but rather to preprocessors. Additionally the color fusion algorithm does not appear to be taught in the prior art.

The Examiner asserts that the reference also discloses the SCF algorithm in Figure 6. But Figure 6 nowhere appears to show this algorithm. The examiner is asked to point out specifically what element(s) in figure 6 would correspond to this algorithm.

The Examiner asserts that the reference also discloses the PPCF algorithm on column 3, lines 28-43. But this section of the specification does not appear to show this algorithm. The examiner is asked to point out specifically what element(s) in figures or the text teach this algorithm together with the other features of the applicant's invention.

Response to the rejection of claims 8, 9, 11, 12, 21, and 22 under 35 U.S.C. 103.

The Examiner has rejected the applicant's prior claims in view of the combination of Waxman and Watkins. The applicant now submits that the newly amended claims distinguish over the prior art. The applicant also submits that the Examiner has not provided the required motivation to combine these references in that Watkins describes a system for improving depth perception and color discrimination while Waxman describes a system for combining image data. The applicant submits that without the required motivation to combine these references, the Examiner can not reject the applicant's claims on this statutory basis.

In addition, the claims as currently drafted include in the independent claims the features of the two algorithms necessary to implement the invention. This included feature is not shown in Waxman, nor the other reference Watkins.

Finally, the applicant has used the a rejection based on official notice in the rejection of claim 8. The applicant respectfully traverses this rejection and requests that the examiner provide prior art describing the well-known desaturation techniques. The applicant respectfully points to the MPEP 2144.03 as the basis of the requirement of a prior art teaching when the Official Notice rejection is challenged:

> It would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known. For example, assertions of technical facts in the areas of esoteric technology or specific knowledge of the prior art must always be supported by citation to some reference work recognized as standard in

the pertinent art. *In re Ahlert*, 424 F.2d at 1091, 165 USPQ at 420-21. See also *In re Grose*, 592 F.2d 1161, 1167-68, 201 USPQ 57, 63 (CCPA 1979) ("[W]hen the PTO seeks to rely upon a chemical theory, in establishing a prima facie case of obviousness, it must provide evidentiary support for the existence and meaning of that theory."); *In re Eynde*, 480 F.2d 1364, 1370, 178 USPQ 470, 474 (CCPA 1973) ("[W]e reject the notion that judicial or administrative notice may be taken of the state of the art. The facts constituting the state of the art are normally subject to the possibility of rational disagreement among reasonable men and are not amenable to the taking of such notice.").

It is never appropriate to rely solely on "common knowledge" in the art without evidentiary support in the record, as the principal evidence upon which a rejection was based. *Zurko*, 258 F.3d at 1385, 59 USPQ2d at 1697 ("[T]he Board cannot simply reach conclusions based on its own understanding or experience-or on its assessment of what would be basic knowledge or common sense. Rather, the Board must point to some concrete evidence in the record in support of these findings."). While the court explained that, "as an administrative tribunal the Board clearly has expertise in the subject matter over which it exercises jurisdiction," it made clear that such "expertise may provide sufficient support for conclusions [only] as to peripheral issues." *Id.* at 1385-86, 59 USPQ2d at 1697. As the court held in *Zurko*, an assessment of basic knowledge and common sense that is not based on any evidence in the record lacks substantial evidence support. *Id.* at 1385, 59 USPQ2d at 1697. See also *In re Lee*, 277 F.3d 1338, 1344-45, 61 USPQ2d 1430, 1434-35 (Fed. Cir. 2002) (In reversing the Board's decision, the court stated " 'common knowledge and common sense' on which the Board relied in rejecting Lee's application are not the specialized knowledge and expertise contemplated by the Administrative Procedure Act. Conclusory statements such as those here provided do not fulfill the agency's obligation..The board cannot rely on conclusory statements when dealing with particular combinations of prior art and specific claims, but must set forth the rationale on which it relies.").

Conclusion

In view of the differences between the claims as currently presented and the cited prior art it is now submitted that the applicant's newly submitted claims overcome the prior art of record.

In view of the foregoing amendments and arguments, the Examiner is respectfully requested to pass these claims to allowance.

Please charge any additional fees due or credit overpayment of fees to Deposit Account Number 50-0281.

Respectfully submitted,

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